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August 2, 2017

BY OVERNIGHT COURIER

National Freedom of Information Officer
U.S. Environmental Protection Agency
1301 Constitution Avenue, NW, Room 6416 West
Washington, D.C. 20004

Regional Freedom of Information Officer
U.S. EPA, Region 1 (OARM01-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Freedom of Information Act Request Regarding *Ocean Disposal;
Designation of a Dredged Material Disposal Site in Eastern Region of
Long Island Sound; Connecticut*, 81 Fed. Reg. 87820 (Dec. 6, 2016)

Dear Sir or Madam:

The Department of State ("NYSDOS") respectfully requests that the U.S. Environmental Protection Agency ("EPA") provide, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the pertinent EPA regulations, 40 C.F.R. § 2.100 *et seq.*, certain records concerning EPA's designation of a disposal site for dredged materials known as the Eastern Long Island Sound Disposal Site (the "Site") published in the above-referenced Federal Register notice.

Specifically, NYSDOS asks that EPA produce the following:

Any records, whether in electronic form or hard copy, concerning commercial or recreational navigation through or in the region defined as the "Zone of Siting Feasibility" on page 1-15 of the *Supplemental Environmental Impact Statement for the Designation of Dredged Material Disposal Site(s) in Eastern Long Island Sound, Connecticut and New York* (November 2016) (the "SEIS"). This request includes, but is not limited to:

1. All records concerning Figure 4-48 of the SEIS, including without limitation:
 - a. the final version and all drafts of that figure in native electronic format,
 - b. all original source data (e.g. file geodatabase, shapefile, web services, map packages, layer packages, etc.) and associated derivative data sets used to prepare the drafts or final version of that figure, along with the associated attribute tables,



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metadata, data dictionary, and creation methodology for each,

- c. all e-mails, memoranda or other written communications regarding the drafts or final version of that figure,
- d. all records regarding the datasets, methodology or criteria used to derive the "vessel traffic density" on the drafts or final version of that figure, including without limitation all records regarding pre- and post-processing data and methodology, and
- e. all reference materials used to prepare the drafts or final version of that figure.

2. All records concerning Figure 6 of Appendix B to the SEIS, including without limitation:

- a. the final version and all drafts of that figure in native electronic format,
- b. all original source data (e.g. file geodatabase, shapefile, web services, map packages, layer packages, etc.) and associated derivative data sets used to prepare the drafts or final version of that figure, along with the associated attribute tables, metadata, data dictionary, and creation methodology for each,
- c. all e-mails, memoranda or other written communications regarding the drafts or final version of that figure,
- d. all records regarding the datasets, methodology or criteria used to derive the "vessel traffic density" on the drafts or final version of that figure, and
- e. all reference materials used to prepare the drafts or final version of that figure.

3. All data regarding commercial or recreational navigation in or through the Zone of Siting Feasibility for the period from 2010 to present, whether or not used in the preparation of Figure 4-48 of the SEIS or Figure 6 of Appendix B to the SEIS, including without limitation all data obtained from the U.S. Coast Guard or from the National Oceanic and Atmospheric Administration's geographic information system data base.

4. All reports or data analyses regarding commercial or recreational navigation in or through the Zone of Siting Feasibility for the period from 2010 to present, whether or not used in the preparation of Figure 4-48 of the SEIS or Figure 6

of Appendix B to the SEIS, including without limitation all reports or data analyses relating to data obtained from the U.S. Coast Guard or from the National Oceanic and Atmospheric Administration's geographic information system data base.

- 5. All e-mails, memoranda, or other written communications, whether in electronic form or hard copy, pertaining to the Cross Sound Ferry operations and the designation of a dredged material disposal site in eastern region of Long Island Sound.**
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NYDOS also respectfully requests that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA requires that requested records be provided without charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); see also 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of those requirements.

First, the records requested would shed light on a matter of considerable public interest, namely, EPA's designation of the Site. As EPA is aware, New York State, through the NYSDOS and the New York State Department of Environmental Conservation ("NYSDEC"), as well as a number of New York citizen groups and individual residents of the State, has expressed concern with, or opposition to, the designation of the Site. NYSDOS and NYSDEC have submitted detailed comments to EPA regarding the proposed designation of the Site. Providing the records requested above to NYSDOS would allow the State's representatives to review, on behalf of itself and its affected citizens, additional documents regarding the designation of the Site and the process that led to it that are not, to the State's knowledge, publicly available at this time. Based on the requested records, New York State anticipates being able to determine with more specificity what evidence and reasoning EPA relied upon or otherwise considered that may support or be contrary to the designation of the Site, and New York State may then refer to, or attach, the requested records in future public filings in litigation or in other forums. Thus, providing the requested records is likely to contribute significantly to public understanding of the operations or activities of the government, namely EPA's designation of the Site. See 40 C.F.R. § 2.107(l)(2).

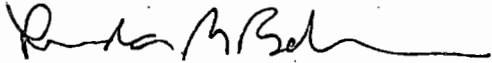
Second, NYSDOS's interest in obtaining the documents is not commercial, since it, as a state government, has no commercial interest in the records sought. Instead, as noted above, it seeks these records in the exercise of its governmental functions to serve the public interest by learning more about the information available to and developed by EPA as it made its decision to designate the Site. "Congress amended FOIA to ensure that it is 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted). Accordingly, because NYSDOS, as a state governmental agency, and New York State, as a state government, have no commercial interest that would be furthered by the requested disclosure, this request satisfies the second prerequisite for a fee waiver as well. See 40 C.F.R. § 2.107(l)(3).

Nonetheless, in order to prevent delay in EPA's provision of the requested records, NYSDOS is willing, if necessary and under protest, to pay fees for the production of the records in accordance with 40 C.F.R. § 2.107(c)(1)(iv), (c)(2) and (d). Thus, please provide the requested records irrespective of the status and outcome of EPA's evaluation of this request for a waiver

of all costs and fees. Please contact me and obtain my approval, however, before undertaking any action that would cause the fees to exceed two hundred dollars (\$200). Payment of such fees will not constitute any waiver of NYSDOS's or New York State's right to seek administrative or judicial review of any denial of its fee waiver request.

Please direct the records or any other response to my attention. If you should have any questions, please feel free to contact me at (212) 417-5803 or at linda.baldwin@dos.ny.gov. Thank you in advance for your prompt attention to this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Linda M. Baldwin", with a long horizontal flourish extending to the right.

Linda M. Baldwin,
General Counsel